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Supreme Court, U.S.
FILED
07-252 AUG 20 2007
OFFICE OF THE CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

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John L. Corrigan,

Petitioner

v.

Myron Kline, et al.

Respondent,

----------•----------

On Petition For Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

----------•----------

PETITION FOR WRIT OF CERTIORARI

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John L. Corrigan
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QUESTIONS PRESENTED

Whether the U.S. Claims Court violates due process protections when it dismisses on summary judgment without first allowing discovery – under the circumstances at bar.

LIST OF PARTIES

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TABLE OF CONTENTS

	Page #
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS	1
STATEMENT OF THE CASE	2
QUESTION PRESENTED	
DENIED DUE PROCESS	3
ARGUMENT	
Discovery was Overdue and Promised by Defendant	5
Corrigan Is Entitled To Discovery . . .	7
Improper Order to Stay Discovery. . .	9

TABLE OF CONTENTS – Continued

	Page
REASONS FOR GRANTING CERT.	**14**
CONCLUSION	**14**
APPENDICES:	**App.**
U.S. District Court Order Granting Defendants' Motion for Summary Judgment Dated November 15, 2005	**1**
U.S. District Court Order Denying Motion for Reconsideration Dated August 1, 2006	**6**
U.S. Court of Appeals for the 9th Circuit Memorandum Dated March 14, 2007.	**8**
U.S. District Court Defendants' Motion to Stay Discovery Pending Ruling on Qualified Immunity Dated April 24, 2006	**10**

AUTHORITIES

Page #

Gammon v. Clark Equipment Co., 686 P.2d 1102, 1106 (Wash. App. 1984) 8

Marshall v. Jerrico, Inc, 100 S Ct 1610 (1980) . 3

OTHER AUTHORITIES

5th Amendment to the U.S. Constitution . . . 1

27 C. J. S 4-5

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Police and Misconduct Law and Litigation 3rd, © 2004 West 7

Supreme Court Practice, 7th Edition 11

OPINIONS BELOW

The opinions of the United States District Court, and the United States Court of Appeals for the Ninth Circuit are unreported.

JURISDICTION

The judgment of the United States District Court, Western District of Washington at Seattle on July 18, 2006. (App. 1). The reconsideration of the judgment of the United States District Court, Western District of Washington at Seattle on August 1, 2006. (App. 6) The judgment of the United States Court of Appeals for the Ninth Circuit affirming on May 23, 2007. (App. 8)

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The "due process clause" of the 5th Amendment to the U.S. Constitution. FRCP Part V. Dispositions and Discovery – Rules 26-37

STATEMENT OF THE CASE

Corrigan alleges that his federal civil rights were violated when defendant, Federal Way police officer Myron Kline, unlawfully detained him during a traffic stop, and added a citation for speeding to two other citations for failure to carry registration and loud exhaust pipes.

Corrigan alleges that he was initially cited for failure to have a registration and for loud exhaust pipes. He then alleges that the police officer did not like his responses to "additional mundane questions" and added a citation for speeding.

Corrigan challenged his citations in Federal Way Municipal Court and was found guilty of all three charges.

Corrigan now asserts federal and state law claims against the officer that issued the citations, Myron Kline, Chief of Police Anne Kirkpatrick, and the City of Federal Way.

QUESTION PRESENTED

Whether the U. S. Claims Court violates due process protections when it dismisses on summary judgment without first allowing discovery – under the circumstances at bar.

ARGUMENT

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.
>
> . . . Indeed, "justice must satisfy the appearance of justice," . . . [Citations omitted] [Emphasis added]

Marshall v. Jerrico, Inc., 100 S.Ct. 1610, 1613, (1980)

Corrigan did not receive a "fair and impartial trial" because the District Court stayed discovery – committing prejudicial error and in this case – plain error.

> **Plain error rule.** . . . Doctrine which encompasses those errors which are obvious and highly prejudicial, which affect the substantial rights of the accused, and which, if uncorrected, would be an affront to the integrity and reputation of judicial proceedings. [Citations omitted]

Black's Law Dictionary, 6th Edition, © 1990 West Publishing Co.

Corrigan could not fairly present his case because the District Court denied Corrigan's request for discovery.

> Matters relating to discovery rest in the discretion of the trial court, and such discretion is inherent and broad. However, the court's discretion is not unlimited, unbridled, or unfettered; and where discovery is sought as to a nonprivileged matter which is directly relevant to the issues before the court, there is no room for the exercise of discretion. The trial court abuses its discretion in discovery when it reaches a decision that is so arbitrary and unreasonable that it results in a clear and prejudical error of law. Likewise, a trial court abuses its discretion in matters of

> discovery if its actions substantially tip the balance in an effort to avoid prejudice and delay and thus unreasonably deny a party his day in court. [Citations omitted]

27 C.J.S. § 4 page 11.

Consider the following:

Discovery Was Overdue and Promised By Defendant.

Corrigan submitted a first request for Interrogatories to Defendant Myron Kline and a First Request for Production of Documents to Defendant City of Federal Way on January 3, 2006. Later, defendant requested an extension because he was still gathering information and was very close to having all the information for Corrigan. Corrigan granted the extension.

However, prior to submitting the promised discovery, defendant motioned the court for a stay of discovery pending ruling on qualified immunity noted on motion calendar May 12, 2006. The court granted the stay and later granted the summary judgment.

There were no claims that Corrigan was abusing the discovery process and as such the requested discovery should have been produced. There was no prejudice on the defendant to produce

the discovery – because the defendant claimed to have it almost ready.[1]

Corrigan should not be prejudiced because defendant is trying to circumvent the rules of discovery.

> It may very well be that timely answers to the interrogatories and production of the accident reports would have made no difference. This is not for us to decide. It is precisely because we cannot know what impact full compliance would have had that we must grant a new trial. . . .
>
> > . . . But, as said by the Supreme Court, a litigant who has engaged in misconduct is not entitled to "the benefit of calculation, which can be little better than speculation, as to the extent of the wrong inflicted upon his opponent.
>
> . . . Far from insuring that a wrongdoer not profit from his wrong, minimal terms would simply encourage litigants to embrace tactics of evasion and delay. This we cannot do. [Citations omitted]

Gammon v. Clark Equipment Co., 686 P2d 1102, 1107 (Wash.App. 1984)

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[1] Defendant was certainly given enough time to provide it and/or object to it if it was burdensome or submitted for an improper purpose.

The purpose of a stay is to protect the defendant from expenses associated in gathering discovery when it may not be necessary as a point of law. However, that does work here because the defendant had already incurred the expense of gathering the discovery. Defendant just never took the final step in handing it over to Corrigan.

This is plan error because the stay totally benefited the defendant, and totally prejudiced Corrigan. The defendant is benefiting for his wrongdoing – and totally prejudicing Corrigan in the process – this is proscribed by the U.S. Supreme Court. See Gammon.

Corrigan Is Entitled To Discovery

> To the degree that a defendant asserts that previously established legal doctrine did not clearly proscribe his or her conduct, the threshold question is: What occurred. In many cases there is a sharp dispute over the facts. And, since the *Harlow-Anderson* rule does not purport to change the way in which factual issues are litigated, only where there is no dispute as to the underlying conduct (or where the plaintiff's version would justify an immunity finding) can the court properly dispense with discovery. [Citations omitted]

Police and Misconduct Law and Litigation 3rd, © 2004 West.

Corrigan alleges that defendant Kline:

- lied at the trial about the circumstances of the citation;
- that he did not and could not pace Corrigan for the speeding violation;
- added speeding to the ticket after already writing up the citation for the other two infractions; and
- caused Corrigan to be unlawfully detained because defendant enlarged the time it normally takes to write a citation because of all the abuses that Corrigan was subjected to.

Defendant Kline, therefore, was not entitled to qualified immunity. So, there is a great deal of dispute over the underlying conduct of the traffic citation, and plaintiff's version would not justify an immunity finding – therefore, the court cannot properly dispense with discovery on the qualified immunity claim.

Further, the idea that Corrigan is not allowed discovery for other summary judgment issues is grossly contradictory to the liberal discovery rules.

Improper Order To Stay Discovery

The district court granted a stay of discovery while defendant presented a motion for qualified immunity. (App. 10)[2] However, defendant did not present a motion for qualified immunity. Defendant submitted a motion for summary judgment listing four issues for the court to consider – only one of which was qualified immunity. This was grossly improper and very prejudicial to Corrigan - one the court was aware of.

> Plaintiff misunderstands the nature of the instant motion. Defendants have sought summary judgment on several grounds, including their entitlement to qualified immunity. This is the exact motion that defendants proposed when this Court previously stayed discovery. *(See* Dkts. #11 and #17). Thus, the instant motion is not improper as plaintiff asserts.

App. 4. This was NOT the exact motion that defendants proposed. The stay was based on qualified immunity – not other summary judgment issues. The court expanded the parameters of the stay while at the same time denying Corrigan an opportunity to oppose the stay relating to those other issues. This is very prejudicial and a denial of due process.

Now, instead of trying to defend against a motion for qualified immunity without discovery,

---

[2] Defendants' motion for the stay is exclusively related to the question of qualified immunity.

Corrigan has to face both a motion for qualified immunity and a motion for summary judgment on other matters – both without the benefit of "liberal discovery rules."

> The Supreme Court has noted that the aim of the liberal federal discovery rules is to "make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. The availability of liberal discovery means that civil trials
>
> > No longer need be carried on in the dark. The way is now clear . . . for the parties to obtain the fullest possible knowledge of the issues and facts before trial. [Citations omitted]

Gammon, at 1106. Corrigan cannot be expected to respond to summary judgment without the opportunity to avail himself of the "liberal" discovery rules. Especially, when the defendant (and, respectfully, with the court's concurrence) is abusing the discovery process.

REASON FOR GRANTING CERT

The reason for granting cert in this case is not because of any major conflicts with other circuits. Corrigan asks that the court be "motivated by a feeling that the decision represents a gross miscarriage of justice or a subtle erosion of a statutory or legal principle, or that the result reached below is unduly harsh in its impact."[3]

It may not seem that a traffic ticket should create such a condition. However, there is something untoward going on in the State of Washington about "due process" in the process of settling traffic issues. While the Washington claims that they have a system of due process – they really do not.

In the case at bar, defendant Kline lied in court about the circumstances of the speeding violation. The record shows that - given the time it took defendant Kline to catch up to Corrigan, pace him for a quarter of a mile (through traffic), then stop Corrigan – the distance Corrigan was stopped would have been much farther then the record shows (including defendant Kline's testimony) it actually was. Also, the ticket shows that the speeding violation was the last thing on the ticket (when the ticket itself has a place for speeding which is the "first" violation section of the citation) which also puts into question the credibility of defendant

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[3] Supreme Court Practice, 7th Edition, © 1993 by The Bureau of National Affairs, Inc., Washington, D.C.

Kline's statement. Discovery of these issues and more (especially defendant Kline's potential bias against Harley-Davidson riders) was sought through discovery – which was denied by the court – even though it was already assembled by defendant.

Finally, there is something strange about all this.[4] It seems bizarre that the court would take this position on discovery especially at a time when the first request for discovery was already completed by the defendant. Yet, it is very easy to see why defendant would seek not to provide discovery – the major inference being that the discovery would significantly harm defendant's position.

Given the liberal discovery rules, the obvious attempt at circumvention of the discovery rules by defendant, the prejudice to Corrigan in trying to respond to qualified immunity claims and summary judgment claims on other issues without discovery, it seems very strange indeed. Call it paranoid, but this seems to go deeper than the case at bar.[5]

This certainly falls under a miscarriage of justice or erosion of a statutory or legal principle.

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[4] Not the least of which is the 9th COA response about admonition that Corrigan did not prove his case for "additional discovery." Corrigan needs first to establish a case for "any discovery" before he can request "additional discovery."

[5] Corrigan wonders if there is something else going on at the US District Court. While this case seems bizarre in its unique approach to discovery, another US District Court case is even more bizarre in its approach to Rule 11 violations – see US COA-9th No. 06-35998. Corrigan wonders if, perhaps, the protections of due process do not apply to him.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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August 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff,	)	
v.	)	**CASE NO. CV5-1728RSM**
MYRON KLINE, *et.al.* Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on defendants' Motion for Summary Judgment. (Dkt. #18). Defendants argue that plaintiff has failed to support his allegations that any constitutional violations have occurred, plaintiff has failed to support his state law claims, and, even if such claims were supported, defendants are protected by qualified immunity. Plaintiff, appearing *pro se,* responds by arguing that this Court should not have stayed discovery,[6] and that the stay of discovery has prejudiced his case. (Dkt. #23). For the reasons set forth below, the Court agrees with defendants and hereby GRANTS their motion for summary judgment.

---

[6] This Court previously stayed discovery while defendants brought the instant motion for summary judgment based on qualified immunity. *(See* Dkt. #17).

II. DISCUSSION.

A. Background

In this lawsuit, plaintiff claims that his federal civil rights were violated when defendant, a City of Federal Way police officer, unlawfully detained him during a traffic stop, and added a citation for speeding to two other citations for failure to carry registration and loud exhaust pipes. Plaintiff also appears to make state law claims of false imprisonment, outrage, malicious prosecution and negligent infliction of emotional distress.

This action arises from a traffic stop and subsequent arrest of plaintiff Davis on the morning of October 12, 2004, in Federal Way, Washington. According to the Complaint, plaintiff was driving his Harley Davidson motorcycle east on 320th Street South, when he was stopped for speeding. Plaintiff asserts that he was initially cited for failure to have a registration and for loud exhaust pipes. He then alleges that the police officer did not like his responses to "additional mundane questions" and added a citation for speeding.

Defendants acknowledge that Officer Kline cited plaintiff for speeding, loud exhaust pipes, and failure to carry registration. Officer Kline did not place plaintiff under arrest and plaintiff left the scene after he was cited.

Plaintiff challenged his citations in Federal Way Municipal Court and was found guilty of all three charges. Plaintiff states that he is currently appealing that decision to the King County Superior Court.

Plaintiff now asserts federal and state law claims against the officer that issued the citations, Myron Kline, Chief of Police Anne Kirkpatrick, and the City of Federal Way.

B. Summary Judgment Standard

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The Court must draw all reasonable inferences in favor of the non-moving party. *See F.D.I.C. v. O'Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev'd on other grounds*, 512 U.S. 79 (1994). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. *See Anderson*, 477 U.S. at 257. Mere disagreement, or the bald assertion that a genuine issue of material fact exists, no longer precludes the use of summary judgment. *See California Architectural Bldg. Prods., Inc., v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987).

Genuine factual issues are those for which the evidence is such that "a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248. Material facts are those which might affect the outcome of the suit under governing law. *See id.* In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *O'Melveny & Meyers*, 969 F.2d at 747). Furthermore, conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 60 F. 3d 337, 345 (9th Cir. 1995). Similarly, hearsay evidence may not be considered in deciding whether material facts are at issue in summary judgment motions. *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F. 2d 665, 667 (9th Cir. 1980).

C. Failure to Respond to Summary Judgment Arguments

Plaintiff completely fails to respond to any of defendants' substantive arguments. He does not dispute the legal standards set forth in defendant's motion, nor does he dispute any of the factual allegations set forth by defendants. Instead, plaintiff argues that "qualified immunity and summary judgment are two very different legal concepts. Discovery rules are different relating to each." (Dkt. #23 at 2). Plaintiff then asks this Court to stay this motion while he conducts discovery and/or seeks an interlocutory appeal relating to discovery.

Plaintiff misunderstands the nature of the instant motion. Defendants have sought summary judgment on several grounds, including their entitlement to qualified immunity. This is the exact motion that defendants proposed when this Court previously stayed discovery. *(See* Dkts. #11 and #17). Thus, the instant motion is not improper as plaintiff asserts.

Moreover, plaintiff's response appears to be an attempt to move this Court to reconsider its previous Order staying discovery. *(See* Dkts. #17 and #23). Notwithstanding the fact that plaintiff did not oppose a motion staying all discovery except that which was currently pending, plaintiff's attempt to move for reconsideration at this point is untimely. This Court's Local Rules require that a party move for reconsideration within ten judicial days of the date of the Order to which it relates. Local Rule CR 7(h)(2). The Order staying discovery was issued on May 16, 2006. (Dkt. #17). Plaintiff s response to the instant motion for summary judgment was filed June 2, 2006 — twelve judicial days after the Court's Order staying discovery. (Dkt. #23). Accordingly, the Court will not reconsider its previous Order.

Accordingly, this Court must also grant summary judgment in defendants' favor. This Court's Local Rules state that lig' a party fails to file papers in opposition to a

motion, such failure may be considered by the court as an admission that the motion has merit." Local Rule CR 7(b)(2). Having reviewed the record in this case, the Court finds no reason not to apply this rule. As noted above, plaintiff has failed to respond to the merits of defendants' arguments, and does not dispute the factual allegations asserted by defendants. Therefore, summary judgment is appropriate.

III. CONCLUSION

Having reviewed defendants' motion for summary judgment (Dkt. #18), plaintiffs opposition (Dkt. #23), defendants' reply (Dkt. #24), the declaration in support of defendants' briefs, and the remainder of the record, the Court hereby ORDERS:

(1) Defendants' motion for summary judgment (Dkt. #18) is GRANTED, and this case is DISMISSED.

(2) The Clerk shall forward a copy of this Order to all counsel of record.

DATED this _18_ day of July 2006.

RICARDO S. MARTINEZ
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff,	)	
v.	)	CASE NO. CV5-1728RSM
MYRON KLINE, *et.al.* Defendants.	)	

ORDER DENYING MOTION FOR RECONSIDERATION

This matter comes before the Court on plaintiff's Motion for Reconsideration. (Dkt. #27). Plaintiff asks this Court to reverse its previous Order granting defendants' motion for summary judgment, in which the Court determined that plaintiff failed to respond to any of defendants' substantive arguments, and untimely moved for reconsideration of the Court's prior Order staying discovery. (Dkt. #25).

Having reviewed plaintiff's instant motion for reconsideration (Dkt. #27), and the remainder of the record, this Court hereby finds and ORDERS:

(1) Plaintiffs Motion for Reconsideration (Dkt. #27) is DENIED. By local rule, motions for reconsideration are disfavored, and the Court will ordinarily deny such a motion in the absence of "a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." W.D. Wash. Local Rule CR 7(h). In his motion for reconsideration, plaintiff essentially reiterates the same argument pertaining to discovery that he previously presented to this Court. Plaintiff then suggests, for the first time, that he should have been allowed

additional time to respond to defendants' substantive arguments. Finally, plaintiff appears to reiterate the claims he raised in his Complaint. In making its previous decision, the Court fully considered plaintiff's arguments, and examined the factual record presented on defendants' motion for summary judgment. Plaintiff has presented no new facts or arguments that persuade the Court that it committed manifest error granting that motion. Accordingly, the Court declines to reconsider its previous Order.

(2) The Clerk shall forward a copy of this Order to plaintiff and all counsel of record. DATED this 1 day of August, 2006.

RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

John L. Corrigan
Plaintiff-Appellant,

v.

MYRONE KLINE, Officer, City of Federal Way Police; et al.,
Defendants – Appellees.

No. 06-35738

D.C. No. CV-05-01728-RSM

MEMORANDUM*

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted May 16, 2007+

Before: PREGERSON, REINHARDT, and TASHIMA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

+ The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

John L. Corrigan appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that his civil rights were violated when he was cited for traffic offenses. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment and may affirm on any basis supported in the record. *Enlow v. Salem-Keizer Yellow Cab Co., Inc.*, 389 F.3d 802, 811 (9th Cir. 2004). We affirm.

The district court did not err when it granted summary judgment because Corrigan failed to set forth specific facts showing that there is a genuine issue for trial, as required by Fed. R. Civ. P. 56(c). *See T W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass 'n,* 809 F.2d 626, 630 (9th Cir. 1987). To the extent Corrigan contends that the district court should have granted a continuance and permitted him to conduct discovery, the district court did not err because Corrigan did not "show that additional discovery would uncover specific facts which would preclude summary judgment." *Maljack Prods., Inc. v. Good Times Home Video Corp.*, 81 F.3d 881, 888 (9th Cir. 1996).

The district court did not abuse its discretion when it denied Corrigan's motion to reconsider because Corrigan did not present the district court with "newly discovered evidence" or show that the district court "committed clear error or [that] the initial decision was manifestly unjust." *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1258, 1263 (9th Cir. 1993).

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff,	)	
v.	)	NO. CV5-1728RSM
MYRON KLINE, *et.al.* Defendants.	)	

DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RULING ON QUALIFIED IMMUNITY

[NOTE ON MOTION CALENDAR: May12, 2006]

I. RELIEF REQUESTED

Defendants City of Federal Way Police Officer Myron Kline, Chief of Police Anne E. Kirkpatrick, and the City of Federal Way seek an order staying discovery while defendants bring a motion for and obtain a ruling on whether they are entitled to qualified immunity.

II. STATEMENT OF FACTS

Plaintiff claims that the defendant police officers violated his rights during an discovery cut-off date of December 18, 2006. Trial in this matter is currently scheduled for April 16, 2007.

Defendants believe they are protected by qualified immunity and are in the process of preparing a motion which will present this matter for the court's consideration. Plaintiff, on the other hand, has stated his intent to proceed with

discovery, including requesting production of officer personnel files and other voluminous materials relating to the officer.

III. ISSUE PRESENTED

Whether discovery should be stayed pending determination of qualified immunity issues.

IV. LEGAL AUTHORITY AND ARGUMENT

Discovery should be stayed pending the determination of defendants' right to qualified immunity. In *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982), the Supreme Court held that until the threshold issue of immunity is resolved, discovery should not proceed. *C.f. Anderson v. Creighton,* 483 U.S. 635, 646 n. 6 (1987) (denial of discovery is appropriate on qualified immunity issue where actions alleged by plaintiff are such that a reasonable officer could have believed they were lawful). In *Mitchell v. Forsyth,* 472 U.S. 511, 525 (1985), the Supreme Court again explained that "the essence" of immunity is the defendant's "entitlement not to have to answer for his conduct in a civil damages action." Such a defendant is entitled to a ruling on a motion to dismiss "based on official immunity before the commencement of discovery." *Id.* at 526 (recognizing that "[u]nless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery"). *See also DiMartini v. Ferrin,* 889 F.2d 922 (9th 1989). In furtherance of this policy, police officer defendants also have the right to immediately appeal a denial of qualified immunity. *See, e.g., Marks v. Clarke,* 102 F.3d 1012, 1017 n. 8 (9th Cir. 1997) (recognizing that in *Behrens v. Pelletier,* 516 U.S. 299 (1996), the Supreme Court "held that a defendant may appeal both the district court's denial of a motion to dismiss on the basis of qualified immunity and a

subsequent denial of summary judgment on the basis of such immunity"). *See also Moran v. State,* 147 F.3d 839 (9th Cir. 1998) (W.D. Washington stayed discovery pending defendant police officers' motion for summary judgment based on qualified immunity.)

Defendants should not be burdened with discovery until their rights to qualified immunity have been considered. The Court should stay discovery in accordance with the authorities cited above.

V. CONCLUSION

In order to allow the defendants Myron Kline and Anne Kirkpatrick the ability to invoke qualified immunity from suit, discovery should be stayed until the defendants' right to qualified immunity has been determined.

DATED this 24th day of April, 2006.

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68

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No. 07-252

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

JOHN L. CORRIGAN,

Petitioner,

v.

CITY OF FEDERAL WAY POLICE OFFICER MYRON KLINE; CHIEF OF POLICE ANNE E. KIRKPATRICK; CITY OF FEDERAL WAY,

Respondents.

On Petition For Writ Of Certiorari To The Ninth Circuit Court Of Appeals

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Should this Court deny the Petition for Writ of Certiorari when this Court and the lower federal courts have uniformly and consistently applied the doctrine of qualified immunity as established by *Harlow*, *Anderson*, and their progeny, and petitioner raises no issues sufficient for certiorari?

2. Should this Court deny the Petition for Writ of Certiorari when petitioner articulated no evidence nor allegations to support a genuine issue of material fact regarding petitioner's underlying claims?

3. Should this Court deny the Petition for Writ of Certiorari when petitioner failed to file a motion to reconsider the district court's stay on discovery pending determination of qualified immunity?

PARTIES TO THE PROCEEDING

Petitioner:

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Respondents:

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City of Federal Way Chief of Police
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City of Federal Way Police Officer
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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE	1
COUNTERSTATEMENT OF THE CASE	5
SUMMARY OF REASONS TO DENY THE WRIT	7
REASONS TO DENY THE WRIT	8
A. The Court's Considerations Governing Review on Certiorari	8
1. The Long-Standing and Well-Established Qualified Immunity Doctrine Does Not Present a Compelling Federal Question Demanding Review As Applied to The Circumstances of this Case	9
2. There is No Evidence Showing the Facts Were Erroneously Applied Under the Summary Judgment Standard or Qualified Immunity Doctrine	13
B. Petitioner Failed to Timely Object to the Motion to Stay Discovery	14
CONCLUSION	15

TABLE OF CONTENTS – Continued

Page

APPENDIX

Order dated May 16, 2006 from the United States District Court for the Western District of Washington Granting the Defendants' Motion to Stay Discovery ..... App. 1

Defendants' Motion for Summary Judgment... App. 3

Plaintiff's Response to Defendant's Motion to Stay Discovery Pending Ruling on Qualified Immunity ..... App. 27

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987) 10, 15

Brosseau v. Haugen, 534 U.S. 194, 125 S.Ct. 596 (2004) 10

Celotex Corp. v. Catrett, 47 U.S. 317 (1986) 13

Crawford-El v. Britton, 523 U.S. 574, 118 S.Ct. 1584 (1998) 11

Creelman v. Svenning, 1 Wn.App. 402, 461 P.2d 557 (1969) 12

DiMartini v. Ferrin, 889 F.2d 922 (9th Cir. 1989) 11

Fuller v. M.G. Jewelry, 950 F.2d 1437 (9th Cir. 1991) 10

Harlow v. Fitzgerald, 57 U.S. 800, 102 S.Ct. 2727 (1982) 6, 9, 15

Hunter v. Bryant, 502 U.S. 224 (1991) 10, 12

Malley v. Briggs, 475 U.S. 335, 106 S.Ct. 1092 (1986) 10

Mitchell v. Forsyth, 472 U.S. 511 (1985) 6, 11

Moran v. State, 147 F.3d 839 (9th Cir. 1998) 11

Reid v. Pierce County, 136 Wn.2d 195, 961 P.2d 333 (1998) 12

Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151 (2001) 9

TABLE OF AUTHORITIES – Continued

Page

Snyder v. Medical Service Corp. of Eastern Washington, 145 Wn.2d 223, 35 P.3d 1158 (2001) 12

Triton Energy Corp. v. Square D Co., 68 F.3d 1216 (9th Cir. 1995) 13

Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216 (1989) 13

STATUTES

42 U.S.C. § 1983 1

42 U.S.C. § 1988 2

RCW 46.37.537 5

OTHER AUTHORITIES

Sup. Ct. R. 10 ..... 3, 8

Fed. R. Civ. P. 26 11

Local Rule CR 7(h)(2) 4

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is unreported and appears in the Petition for Writ of Certiorari, App. p. 8. The order from the United States District Court for the Western District of Washington granting the defendants' motion for summary judgment is unreported and appears in the Petition for Writ of Certiorari, App. p. 1.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, AND REGULATIONS INVOLVED IN THIS CASE

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of

Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1988:

(a) Applicability of statutory and common law: The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees: In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20

U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees: In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

Sup. Ct. R. 10:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict

> with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Local Rule CR 7(h)(2):

> *Procedure and Timing.* A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within ten judicial days following the order to which it relates.

> The motion shall be noted for consideration for the day it is filed. The motion shall point out with specificity the matters which the movant believes were overlooked or misapprehended by the court, any new matters being brought to the courts attention for the first time, and the particular modifications being sought in the court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion.

COUNTERSTATEMENT OF THE CASE

Respondent City of Federal Way Police Officer Myron Kline was operating a marked Federal Way patrol car on October 12, 2004. At approximately 9:00 a.m., he stopped Petitioner John L. Corrigan. One reason Officer Kline had probable cause for the stop was that he heard amplified exhaust noise coming from petitioner's motorcycle, in violation of RCW 46.37.537. Officer Kline cited petitioner for the loud exhaust pipes, as well as failure to carry registration and speeding. (Petition for Writ of Certiorari, p. 2.) Petitioner claims Officer Kline added the speeding citation in response to petitioner's "additional mundane questions." (Id.) Officer Kline never placed petitioner under arrest, and petitioner left the scene after he was cited for the traffic violations. (App. 2, p. 2.) Petitioner challenged the citations in Federal Way Municipal Court and was found guilty on all three charges. (Petition for Writ of Certiorari, p. 2.)

On July 18, 2003, petitioner filed a complaint against respondents City of Federal Way, City of Federal Way Police Chief Anne E. Kirkpatrick, and City of Federal Way Officer Myron Kline in the United States District Court for the Western District of Washington. He alleged violations of his civil rights under 42 U.S.C. § 1983 and § 1988 for infringement on his First, Fourth, Eighth, and Fourteenth Amendment rights, and made state law claims of false imprisonment, malicious prosecution, outrage, and negligent infliction of emotional distress. (Petition for Writ of Certiorari, App. pp. 1-2.) Petitioner received the respondents' initial disclosures in March of 2006, which included the October 12, 2004, traffic citation, Officer Kline's narrative regarding the incident, and the Federal Way Municipal Court Order and transcript of the hearing for Case No. IA0087944. Respondents then moved to stay further discovery pursuant to *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982), *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985), and other legal authority. (Petition for Writ of Certiorari, App. 10.)

On May 16, 2006, the court granted respondents' motion to stay discovery until the court could rule on respondents' motion for summary judgment based on qualified immunity. (App. 1.) The order applied to all pending and future discovery requests. (Id.) Petitioner did not move for reconsideration of that motion. On July 18, 2006, the district court granted respondents' motion for summary judgment, which included the argument based on qualified immunity,

stating that petitioner failed to respond to respondents' substantive summary judgment arguments, did not dispute the legal standards set forth in respondents' motion to stay discovery, and did not dispute any of the factual allegations set forth by respondents. (Petition for Writ of Certiorari, App. 4-5.) It also noted that reconsideration of the previous motion was untimely. (Id.) The court denied petitioner's motion for reconsideration of the order granting summary judgment on August 1, 2006. (Petition for Writ of Certiorari, App. 6.)

Petitioner appealed to the United States Court of Appeals for the Ninth Circuit, which subsequently affirmed the district court's ruling. (Petition for Writ of Certiorari, App 8.) Petitioner now requests review by the United States Supreme Court.

SUMMARY OF REASONS TO DENY THE WRIT

Review on a writ of certiorari will only be granted for compelling reasons. Here, petitioner has failed to articulate a substantive basis for Supreme Court review. Primarily, there are no conflicts regarding the case law governing qualified immunity or stays of discovery. Nor are there any allegations to support a genuine issue of material fact regarding petitioner's initial claims. Moreover, petitioner failed to timely file a motion to reconsider the district court's stay on

discovery pending determination of qualified immunity. The Court should deny review of this case.

REASONS TO DENY THE WRIT

A. The Court's Considerations Governing Review on Certiorari.

Review on a writ of certiorari is not a matter of right, but of judicial discretion. U.S. Sup. Ct. R. 10. It will only be granted for compelling reasons. Id. Rule 10 lists examples indicating the character of the reasons the Court may consider before accepting a case for review. Id. These include conflicting decisions of United States Courts of Appeal; conflicting decisions of state courts of last resort on a federal question, and an important question of federal law conflicting with the decisions of the United States Supreme Court or that should be settled by the United States Supreme Court. Sup. Ct. R. 10(a)-(c). A petition for a writ of certiorari is rarely granted when there is an allegedly erroneous application of the facts to a properly stated rule of law. Id.

Petitioner acknowledges that his petition does not raise the type of issues for which certiorari is typically granted. (Petition for Writ of Certiorari, p. 11.) Rather, he suggests that the circumstances under which he was found guilty of a municipal traffic violation represent a "miscarriage of justice," a "subtle erosion of statutory or legal principles," or that the result reached was "unduly harsh in its impact."

However, he fails to articulate any legal basis for these "wrongs." Petitioner's claims vastly undershoot the mark established for review by the Supreme Court.

1. The Long-Standing and Well-Established Qualified Immunity Doctrine Does Not Present a Compelling Federal Question Demanding Review As Applied to The Circumstances of this Case.

Petitioner does not dispute legal precedent establishing the qualified immunity doctrine. Government officers performing discretionary functions are entitled to qualified immunity, meaning they are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or Constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982). The Supreme Court has established a two-step analysis for determining whether qualified immunity applies. First, the court must determine whether the officer's conduct, based upon the facts taken in the light most favorable to the party asserting the injury, violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151 (2001). If no constitutional right was violated, the analysis ends and there is "no necessity for further inquiries concerning qualified immunity." *Id.* The second step requires the court to determine whether the officer could nevertheless have reasonably but mistakenly believed that his

conduct did not violate a clearly established constitutional right. *Id.* at 201-02. A right is clearly established if the "contours of the right" are "sufficiently clear that a reasonable officer would understand that what he is doing violates that right." *Brosseau v. Haugen*, 534 U.S. 194, 199, 125 S.Ct. 596 (2004) (*citing Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034 (1987)).

Whether a government officer is entitled to qualified immunity for an allegedly unlawful act turns on whether a reasonable officer could have believed that the actions taken were lawful in light of clearly established law and the information the acting officer possessed at the time. *Anderson*, 483 U.S. at 641; *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1443 (9th Cir. 1991). *See also Harlow*, 457 U.S. at 818. The qualified immunity standard "gives ample room for mistaken judgments" by protecting "all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (*quoting Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092 (1986)).

This Court has clearly and repeatedly held that police officers have the right to a determination of qualified immunity before imposition of discovery burdens. In *Harlow*, the Court held that until the threshold issue of immunity is resolved, discovery should not proceed. *Harlow*, 457 U.S. at 818; *Anderson*, 483 U.S. at 646 n. 6 (denial of discovery is appropriate on qualified immunity issue where actions alleged by plaintiff are such that a reasonable officer

could have believed they were lawful). In *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985), the Court again explained that "the essence" of immunity is the defendant's "entitlement not to have to answer for his conduct in a civil damages action." Such a defendant is entitled to a ruling on a motion to dismiss "based on official immunity before the commencement of discovery." *Id.* at 526 (recognizing that "[u]nless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery"). *See also DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989); *Moran v. State*, 147 F.3d 839 (9th Cir. 1998) (court stayed discovery pending defendant police officers' motion for summary judgment based on qualified immunity.) In light of this well-established precedent, the district court properly stayed discovery pending a determination of qualified immunity.

Petitioner does not dispute the legal standard for qualified immunity or legal precedent allowing for a stay of discovery. Instead, Petitioner argues that the stay of discovery was based on qualified immunity and not the other summary judgment issues and thus he should have had access to discovery for all other issues on summary judgment. (Petition for Writ of Certiorari, p. 9.) Petitioner misapplies the legal principles at play. The trial court has broad discretion to tailor discovery narrowly and to dictate the sequence of discovery. Fed. R. Civ. P. 26; *Crawford-El v. Britton*, 523 U.S. 574, 598, 118 S.Ct. 1584 (1998). The

district court had full authority and legal support to stay discovery in this case.

Moreover, further discovery would have been of no benefit to petitioner. If Officer Kline's actions were protected by qualified immunity, they could not also form the basis of false imprisonment, outrage, negligent infliction of emotional distress, or malicious prosecution. These state law claims require the defendant to take an intentional or negligent action that is unlawful. *See Kellogg v. State*, 94 Wn.2d 851, 856, 621 P.2d 133 (1980) (intentional confinement is a required element of false imprisonment claim); *Reid v. Pierce County*, 136 Wn.2d 195, 202, 961 P.2d 333 (1998) (intentional or reckless infliction is a required element of outrage claim); *Snyder v. Medical Service Corp. of Eastern Washington*, 145 Wn.2d 223, 243, 35 P.3d 1158 (2001) (breach of duty is a required element of negligent infliction of emotional distress claim); *Creelman v. Svenning*, 1 Wn.App. 402, 404, 461 P.2d 557 (1969) (malice is a required element of malicious prosecution claim); *see also Hunter*, 502 U.S. at 229 (qualified immunity does not protect officers who knowingly violate the law). The petitioner presented no argument how additional discovery could have established a material issue of fact as to any of these claims and they were properly dismissed by summary judgment.[1] Petitioner's objection to the

[1] Moreover, as explained in Section C, supra, petitioner's failure to move for reconsideration of the order to stay discovery extinguished his right to challenge the order and he presents no argument to the contrary.

stay of discovery does not establish grounds for Supreme Court review.

2. There is No Evidence Showing the Facts Were Erroneously Applied Under the Summary Judgment Standard or Qualified Immunity Doctrine.

Petitioner's writ does not challenge the standard by which summary judgment was decided in the district court. A defendant may prevail on summary judgment by showing that there is an absence of evidence to support an element of the plaintiff's case. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 (1989) (*citing Celotex Corp. v. Catrett*, 47 U.S. 317 (1986)). If the plaintiff then does not meet his burden of producing evidence to establish every essential element of his case, "there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Young*, 112 Wn.2d at 225 (*quoting Celotex*, 477 U.S. at 322-23). "The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient." *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). As such, "summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favour." *Id.*

Petitioner claims that Officer Kline was not entitled to qualified immunity because he could not

have paced petitioner's speed, the speeding ticket was added as the third citation, and he took too long writing the citation. (Petition for Writ of Certiorari, p. 8.) Petitioner's claims are merely conclusory allegations and do not present a genuine issue of material fact. Furthermore, these claims were not argued in petitioner's response to respondents' summary judgment motion, and, even if they were, such claims would not lead a reasonable officer to believe Officer Kline's actions violated clearly established law. There is sufficient, undisputed evidence showing that Officer Kline had probable cause to stop petitioner and issue citations. Through initial disclosures, petitioner had access to the October 12, 2004 traffic citation, Officer Kline's narrative regarding the incident, the Federal Way Municipal Court Order, and transcript of the hearing for Case No. IA0087944. In his response to respondents' summary judgment motion, petitioner had the opportunity to allege any specific facts to establish a genuine issue of material fact. He did not do so. In fact, he has yet to proffer any concrete, specific fact that could be the basis of his federal or state claims. There has been no misapplication of the facts or law in this case to the summary judgment standard so as to justify Supreme Court review.

B. Petitioner Failed to Timely Object to the Motion to Stay Discovery.

Respondents moved to stay discovery pending a ruling on qualified immunity on April 24, 2006. In petitioner's response, he stated he had no problem

with staying discovery for such a purpose; he also stated his hope that discovery already commenced would not be stayed. (App. 3.) On May 16, 2006, the district court judge granted the motion to stay discovery, which applied to all currently pending discovery requests and future discovery requests. Under Local Rule CR 7(h)(2), a party has ten judicial days from the date of the order to move for reconsideration. (Petition for Writ of Certiorari, App. 5.) Petitioner did not file any such motion, and therefore has no right to now claim he should have been allowed discovery before Respondents' motion for summary judgment was filed. Petitioner cannot now be allowed review of the district court's order to stay discovery.[2]

CONCLUSION

The Supreme Court of the United States should deny the Petition for Writ of Certiorari in the present case because there is no compelling reason warranting review. The well-established legal precedent of *Harlow*, *Anderson*, and their progeny upon which the district court and appellate court decisions rest are not in dispute and petitioner raises no federal question regarding their validity or application to the circumstances of his claims. Furthermore, the petitioner has

[2] Furthermore, as set forth above, the district court's order staying discovery was proper pursuant to well-established precedent, and even a timely motion for reconsideration would have properly been rejected.

not demonstrated any facts that present a genuine issue of material fact in support of his claim. Lastly, petitioner is barred from challenging the district court's initial stay of discovery. Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

DATED this 24th day of September, 2006.

Respectfully submitted,

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APPENDIX A-1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff, v. MYRON KLINE, *et al.*, Defendants.	CASE NO. C05-1728RSM ORDER GRANTING MOTION TO STAY DISCOVERY

The instant matter comes before the Court on defendants' motion to stay discovery until this Court has ruled on defendants' motion for summary judgment based on qualified immunity. (Dkt. #11). Plaintiff does not oppose the motion, although he asks that the stay apply only to future discovery deadlines and not currently pending discovery requests. (Dkt. #13).

Having reviewed defendants' motion, plaintiff's response, defendant's reply, and the remainder of the record, the Court does hereby find and ORDER:

(1) Defendants' Motion for Stay of Discovery (Dkt. #11) is GRANTED. Defendants have informed the Court that they will file their motion for summary judgment based on qualified immunity during the week of May 15, 2006. Once the Court has ruled on that motion, either party may move to lift the stay of discovery. *This stay applies to all currently-pending*

discovery requests, as well as to future discovery deadlines. The Court finds that exempting currently-pending discovery requests from the stay would be contrary to the purpose of the stay in this case.

(2) The Clerk is directed to send a copy of this Order to plaintiff and all counsel of record.

DATED this 16 day of May 2006.

/s/ Ricardo S. Martinez
RICARDO S. MARTINEZ
UNITED STATES
DISTRICT JUDGE

APPENDIX A-2

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff, v. CITY OF FEDERAL WAY POLICE OFFICER MYRON KLINE; CHIEF OF POLICE ANNE E. KIRKPATRICK; CITY OF FEDERAL WAY, Defendants.	NO. CV5-1728RSM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT NOTED ON MOTION CALENDAR: June 9, 2006

Defendants move the Court for an order of summary judgment dismissing all of plaintiff's claims and requesting attorney's fees and costs for bringing this motion.

STATEMENT OF FACTS

This cause of action arises from a traffic stop of plaintiff John L. Corrigan on October 12, 2004 in the

City of Federal Way, Washington[1], (See Exhibit A to Dec. of Kline.) At approximately 9:00 a.m. on the date listed above, defendant Myron Kline was operating a marked Federal Way patrol car when he made a traffic stop of plaintiff Corrigan. Plaintiff was cited for speeding, loud exhaust pipes, and failure to carry registration. (Complaint ¶ 7 & 8.) Defendant Kline never placed Mr. Corrigan under arrest. Mr. Corrigan left the scene after he was cited for the traffic violations.

Plaintiff challenged the citation in Federal Way Municipal Court and was found guilty on all three charges. (Exhibit A to Dec. of Dani.) Corrigan appealed and the King County Superior Court affirmed. (Exhibit B to Dec. of Dani.)

Plaintiff has asserted federal and state law claims against Myron Kline (the officer that issued Mr. Corrigan a citation), Anne Kirkpatrick (the police chief who had no personal involvement in this matter), and the City of Federal Way. Defendants seek a summary judgment dismissing all of these claims for the reasons set forth below.

I. STATEMENT OF ISSUES

1. Should the federal law claims against defendants for allegedly violating John Corrigan's Constitutional rights be dismissed on the basis that Officer

[1] Plaintiff notes the wrong year in his Complaint. This incident occurred on October 12, 2004, not October 12, 2005.

Kline had probable cause to stop Mr. Corrigan and detain him for a reasonable period of time?

2. Should the state law claims against defendants for allegedly violating John Corrigan's Constitutional rights be dismissed on the basis that Officer Kline had probable cause to stop Mr. Corrigan and detain him for a reasonable period of time?

3. Should the claims against Officer Kline and Chief Kirkpatrick be dismissed on the basis that they are entitled to qualified immunity?

4. Should plaintiff's claims against the City of Federal Way be dismissed on the basis of a lack of evidence to establish that the "moving force" behind the officer's actions was an unconstitutional city policy or custom?

II. EVIDENCE RELIED UPON

1. Declaration of Steven J. Dani with attachments; and

2. Declaration of Myron Kline with attachments.

III. ARGUMENT

A. Summary Judgment Standard.

The purpose of summary judgment is to avoid useless trials. *Almy v. Kvamme*, 63 Wn.2d 326, 329 (1963). A defendant may prevail on summary judgment

by showing that there is an absence of evidence to support an element of the plaintiff's case. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 (*citing Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). If the plaintiff then does not meet its burden of producing evidence to establish every essential element of its case, "there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Young*, 112 Wn.2d at 225 (*quoting Celotex*, 477 U.S. at 322-23). The nonmoving party

> may not rely on the allegations in the pleadings but must set forth specific facts by affidavit or otherwise that show a genuine issue exists. Additionally, any such affidavit must be based on personal knowledge admissible at trial and not merely on conclusory allegations, speculative statements or argumentative assertions.

Las v. Yellow Front Stores, 66 Wn.App. 196, 198 (1992).

FEDERAL LAW CLAIMS

B. Federal Claims Against the Individual Officers

Plaintiff alleges that defendants violated Mr. Corrigan's civil rights under § 1983 and § 1988 by infringing upon his First, Fourth, Eighth and Fourteenth Amendment rights. (Complaint, ¶¶ 20.) To

recover damages from police officers under the federal civil rights statute, 42 U.S.C. § 1983, it must be shown that the officer was acting under color of law and that he deprived plaintiff of a constitutionally protected right. 42 U.S.C. §1983; *see also Jensen v. City of Oxnard*, 145 F.3d 1078, 1082 (9th Cir. 1998) (*citing Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989)).

1. No Violation of Constitutional Rights by Anne Kirkpatrick.

Plaintiff names Anne Kirkpatrick in her individual capacity as a party to this suit. This claim is essentially an 'official capacity' claim, the legal equivalent of his claim against the City. *See Luke v. Abbott*, 954 F.Supp. 202, 203-4 (C.D.Cal.1997). In *Luke*, the Court held that "the proper *Monell* defendant in a civil rights case is the local government entity, and not the local government officer sued in official capacity on behalf of the local governmental entity." *Id.*, at 202. It stated that naming a local government officer in an official capacity claim "only leads to a duplication of documents and pleadings, as well as wasted public resources for increased attorneys fees." *Id.*, at 204. Thus, it found that when both an officer and the local government entity are named in a lawsuit and the officer is named in an official capacity only, the officer is a redundant defendant and may be dismissed. *See id.*, at 203.

Police chief Anne Kirkpatrick had no involvement in this traffic stop whatever. Plaintiff has so admitted and yet refused to voluntarily dismiss her despite being provided with a safe harbor notice to do so provided under F.R.C.P. 11. (Exhibit E to Dec. of Dani.) Accordingly, the court should not dismiss all claims against Chief Anne Kirkpatrick.

2. No Violation of Fourth Amendment Rights by Myron Kline.

As a matter of law, Officer Kline had probable cause to stop plaintiff and issue him a citation. This brief stop was lawful under the Fourth Amendment, being objectively reasonable in time and manner. Officer Kline did not unlawfully seize Mr. Corrigan or employ excessive force when he cited him. For the reasons set forth below, all aspects of the October 12, 2004 traffic stop were reasonable and lawful.

a. The Traffic Stop Was Lawful

There is no evidence that Officer Kline had any other reason to stop Mr. Corrigan than for the offenses on the citation. The traffic stop on October 12, 2004 was objectively reasonable. Plaintiff can cite to no evidence, as none exists, that contradicts these facts.

It is an undisputed fact that police officers are vested with the power to issue citations for violations of the state's traffic laws. "[T]he decision to stop an

automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), *United States v. Wallace*, 213 F.3d 1216, 1219 (9th Cir.2000). Washington state traffic law requires, "No person shall modify the exhaust system of a motorcycle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emitted by the muffler originally installed on the vehicle, and it shall be unlawful for any person to operate a motorcycle not equipped as required by this section. . . ." RCW 46.37.537. In this case, Officer Kline had probable cause to stop Mr. Corrigan because he heard the amplified exhaust noise coming from Mr. Corrigan's motorcycle.

Furthermore, during Officer Kline's pursuit of Mr. Corrigan he was able to pace his excessive speed. Washington state traffic law requires that "[n]o person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing." RCW 46.61.400. These two traffic infractions gave Officer Kline probable cause to make the initial traffic stop.

Finally, Officer Kline cited Mr. Corrigan for failure to carry his registration. "A certificate of license registration . . . must be carried in the vehicle for which it is issued, . . . It shall be unlawful for any person to operate or have in his possession a vehicle without carrying thereon such certificate of license

registration." RCW 46.16.260. Mr. Corrigan does not dispute that he was not carrying his registration at the time of the traffic stop.

Defendants anticipate that plaintiff will argue Officer Kline detained him for an unreasonable amount of time. RCW 46.61.021(2) gives police officers the authority to detain persons, stopped for traffic infractions for a reasonable period of time "to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction." There is no evidence that Officer Kline detained Mr. Corrigan for more time than was necessary to issue the notice of traffic citation.

Officer Kline did not violate Mr. Corrigan's constitutional rights in stopping him for traffic infractions and taking a reasonable amount of time to issue him the relevant citations, Thus, all of plaintiff's federal law claims against Myron Kline should be dismissed.

3. No First Amendment Violation.

The First Amendment has no application to this traffic stop because Officer Kline did not violate Mr. Corrigan's right to free speech. A plaintiff asserting a violation of his First Amendment right of free speech must establish three elements: (1) plaintiff was engaged in constitutionally protected free speech activity, (2) defendants' actions caused an injury "that would chill a

person of ordinary firmness from continuing in that activity," and (3) defendants specifically intended to inhibit plaintiff's constitutionally protected speech. *See Mendocino Env't Ctr. v. Mendocino County*, 192 F.3d 1283, 1300-01 (9th Cir.1999).

Plaintiff claims "Defendant Kline did not like my responses to additional mundane questions, and went back to his squad car and wrote me up for speeding." (Complaint, ¶ 8.) While Mr. Corrigan may have had a right to free speech in talking with a police officer, he has failed to show Officer Kline's actions caused an injury that would chill a person of ordinary firmness from continuing in that activity. Nonetheless, even if plaintiff satisfies the first two elements, he has not shown that Officer Kline intended to inhibit his speech. There is no evidence from which a First Amendment violation could found. Thus, plaintiff's First Amendment claim that his constitutional right to free speech was violated should be dismissed.

4. No Eighth Amendment Violation.

The Eighth Amendment has no application to this traffic stop. The purpose of the Eighth Amendment is to protect sentenced inmates from cruel and unusual punishment. Mr. Corrigan was not sentenced; he was detained temporarily for a traffic infraction.

Even if Mr. Corrigan was a pretrial detainee, he is not protected by the Eighth Amendment's proscription against cruel and unusual punishment as he was

not convicted of a crime. *Bell v. Wolfish*, 441 U.S. 520, 535 & n.16 (1979); *Ingraham v. Wright*, 430 U.S. 651, 671-72 n.40 (1977). A pretrial detainee is protected from punishment without due process under the Due Process Clause of the Fourteenth Amendment, however. *United States v. Salerno*, 481 U.S. 739, 746-47 (1987); *Bell*, 441 U.S. at 535-56. The protections of the Due Process Clause are at least as great as those of the Eighth Amendment. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983).

Mr. Corrigan was never convicted of a crime and thus was not eligible for the protections provided by the Eighth Amendment. Accordingly, those claims should be dismissed.

5. No Fourteenth Amendment Violation.

In *Lee v. City of Los Angeles*, 250 F.3d 668, 683 (9th Cir.2001), the court held "[T]he loss of liberty caused by an individual's mistaken incarceration 'after the lapse of a certain amount of time' gives rise to a claim under the Due Process Clause of the Fourteenth Amendment." Both incarceration and detention can constitute a deprivation of liberty. *Cole v. Doe 1 thru 2 Officers of City of Emeryville Police Dept.*, 387 F.Supp.2d 1084 (N.D.Cal. 2005). The Fifth Circuit has held that a detention is an unreasonable seizure when its duration exceeds that supported by probable cause. *See United Stats v. Dortch*, 199 F.3d 193, 199-200 (5th Cir.1999) ("Once [defendant] was

not permitted to drive away, the extended detention became an unreasonable seizure, because it was not supported by probable cause. To hold otherwise would endorse police seizures that are not limited to the scope of the officers' reasonable suspicion and that extend beyond a reasonable duration.").

In this case, Officer Kline had reasonable suspicion to stop Mr. Corrigan for two violations of Washington state traffic law, speeding and amplified exhaust noise. Furthermore, the amount of time that Officer Kline took to write the citations was reasonable. Plaintiff does not put forth any evidence to dispute these facts. Thus, any Fourteenth Amendment claim relating to Officer Kline detaining plaintiff for an unreasonable amount of time should be dismissed.

Additionally, it is undisputed that Officer Kline and Chief Kirkpatrick had no involvement in dictating the judicial process by which plaintiff challenged his citations. Thus, the Fourteenth Amendment due process claims against them should be dismissed as well.

6. Claims Against City of Federal Way.

There being no violation of a Constitutional right by Officer Kline, all claims against the City of Federal Way should be dismissed. In order to establish municipal liability for failing to act to preserve constitutional rights, city policy must cause a constitutional violation. *Monell v. Department of Social Services of*

City of New York, 436 U.S. 658 (1978). "It is only when the execution of the government's policy or custom . . . inflicts the injury that the municipality may be held liable under § 1983." *Springfield v. Kibbe*, 480 U.S. 257, 267 (1987) (O'Connor, J., dissenting) (quoting *Monell*, 436 U.S. at 694). The *Monell* court emphasized that:

> a municipality cannot be held liable solely because it employs a tortfeasor – or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory. . . .
>
> . . .
>
> Therefore, . . . a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Monell, 436 U.S. at 691 and 694 (emphasis in original); *see also Collins v. City of Harker Heights*, 503 U.S. 115, 121 (U.S. 1992). Therefore, the Court must first inquire whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. *City of Canton v. Harris*, 489 U.S. 378, 385-86 (1989).

In the instant case, plaintiff alleges that defendant City of Federal Way "failed to provide a fair trial

and additional due process rights" and "failed to properly train and/or supervise Defendant Kline . . . " (Complaint, ¶¶ 15 & 16.) A municipality's failure to train an employee who has caused a constitutional violation can be the basis for § 1983 liability where the failure to train amounts to deliberate indifference to the rights of persons with whom the employee comes into contact. *See Canton*, 489 U.S. at 388.

Plaintiff has provided no evidence of a policy or custom of the City of Federal Way that caused a constitutional violation. Furthermore, plaintiff has not claimed that the City's alleged failure to train amounted to deliberate indifference to the rights of the plaintiff. Therefore, plaintiff's claim against the City of Federal Way fails under *Monell* and all claims against the City should be dismissed.

Municipal Court Immunity

Even if a Constitutional violation was found, the Federal Way Municipal Court is immune from suit. Judges and persons performing judge-like functions are entitled to immunity against monetary damages for actions taken within their official capacity. *See Stump v. Sparkman*, 435 U.S. 349, 355 (1978); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Judicial immunity is not available when a judge acts in "clear absence of all jurisdiction," or performs an act that is not judicial in nature. *See Ashelman*, 793 F.2d at 1075.

For purposes of determining judicial immunity, a clear absence of all jurisdiction means a clear lack of all subject matter jurisdiction. *See Mullis v. U.S. Bankruptcy Court*, 828 F.2d 1335, 1389 (9th Cir. 1987). It is immaterial that the judge may otherwise have acted in error or in excess of his authority. *See Stump*, 435 U.S. at 356. The Supreme Court has illustrated this principle as follows:

> if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Id. at 357 n. 7 (citing *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 352 (1872)).

Here, the Federal Way Municipal Court was authorized by statute to have exclusive jurisdiction over traffic infractions. RCW 3.50.020. The traffic infraction and the hearing are therefore within the statutory jurisdiction of the municipal court. The Federal Way Municipal Court has statutory power to "hear and determine all causes, . . . including traffic infractions." *Id.*

If there was a Constitutional rights violation, Mr. Corrigan's claims against the City of Federal Way as

they relate to the Federal Way Municipal Court and his claim of a fair trial should be dismissed.

C. Officer Kline and Chief Anne Kirkpatrick Are Entitled to Qualified Immunity From Mr. Corrigan's 42 U.S.C. §1983 Claim.

Because plaintiff's constitutional rights prohibiting unreasonable seizure were not violated, the qualified immunity inquiry ends. *See Jackson v. City of Bremerton*, 268 F.3d 646, 651 (9th Cir. 2002). Nonetheless, even where an officer violates a constitutional right, he may be entitled to qualified immunity. *Hunter v. Bryant*, 502 U.S. 224, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991).

> Government officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or Constitutional rights of which a reasonable person would have known.

Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

This shield, moreover, is "an immunity from suit rather than a mere defense to liability," such that a case should not be permitted to erroneously go to trial. *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

Whether an officer is entitled to qualified immunity for an allegedly unlawful act "generally turns on

the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time it was taken." *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). A right is clearly established if the "contours of the right" are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Brosseau v. Haugen*, 125 S.Ct. 596, 599 (2004) (*citing Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

This, in turn, is a "fact-specific inquiry," such that the conduct at issue must be closely analogous to conduct previously found to be unconstitutional. *Floyd v. Laws*, 929 F.2d 1390, 1393 (9th Cir. 1991). The Ninth Circuit has gone so far as to hold that

> [I]f the existence of a right or the degree of protection it warrants in a particular context is subject to a balancing test, the right can rarely be considered "clearly established" at least in the absence of closely corresponding factual and legal precedent.

Brewster v. Board of Education, 149 F.3d 971, 980 (9th Cir. 1998).

The relevant question, then, is whether a reasonable officer could have believed that the actions taken were lawful in light of clearly established law and the information the acting officer possessed at the time. *Anderson v. Creighton*, 483 U.S. 635, 641 (1987); *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1443 (9th Cir. 1991). It must also be remembered that the

qualified immunity standard "gives ample room for mistaken judgments" by protecting "all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (*quoting Malley v. Briggs*, 475 U.S. 335, 343 (1986)).

Qualified immunity offers complete protection for a government official sued in his individual capacity. *Wood v. Kesler* 323 F3rd 872 (11th Cir. 2003). Individual defendants will generally be immune if they objectively could believe that their conduct was lawful. *Lambert v. Richard*, 59 F.3d 134, 137 (C.A.9 (Cal.) 1995) (citing *Act Up!/Portland v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1992)). "The test is wholly objective, and [the Court] do[es] not inquire into the actual subjective intent of the official." *Walnut Properties, Inc. v. City of Whittier*, 861 F.2d 1102, 1111 (9th Cir. 1988); *Bateson v. Geisse*, 857 F.2d 1300, 1304 (9th Cir. 1988).

In this case, Officer Kline and Chief Kirkpatrick are entitled to qualified immunity from Mr. Corrigan's claims because the traffic stop was objectively reasonable. The undisputed facts established an objectively reasonable basis for Officer Kline to stop and cite Mr. Corrigan. Therefore, Mr. Corrigan's 42 U.S.C. § 1983 claim should be dismissed as a matter of law.

D. Officer Kline and Chief Kirkpatrick Are Entitled To Qualified Immunity Under State Law.

Mr. Corrigan's state law claims against Officer Kline and Chief Kirkpatrick should be dismissed because defendants Kline and Kirkpatrick have qualified immunity under state law. A police officer is entitled to state qualified immunity from liability for tortious conduct "if the officer was (1) carrying out a statutory duty, (2) according to procedures dictated to him by statute and superiors, and (3) while acting reasonably." *Dang v. Ehredt*, 95 Wn.App. 670, 680, 977 P.2d 29 (1999); *McKinney v. City of Tukwila*, 103 Wn.App. 391, 13 P.3d 631 (2000).

It is clear from the facts set forth above that Officer Kline's stop of Mr. Corrigan was patently reasonable and legal. He was carrying out his statutory duty to enforce the laws of the state of Washington. Mr. Corrigan violated three traffic laws and was cited for those violations. Because Officer Kline had cause for pulling Mr. Corrigan over and citing him for various statutory violations, he is entitled to qualified immunity from Mr. Corrigan's state claims.

Notwithstanding the defense of qualified immunity, each state law claim should be dismissed for the reasons set forth below.

1. Plaintiff's False Arrest/False Imprisonment Claim Should be Dismissed.

Washington state law authorizes officers to detrain persons for traffic infractions "for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction."[2]

A traffic detention is a seizure and must have been justified in its inception to be lawful *State v. Tijerina*, 61 Wash.App. 626, 628-29, 811 P.2d 241 (*citing Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984)), *review denied*, 118 Wn.2d 1007, 822 P.2d 289 (1991). The detention thus must be based on "a well founded suspicion based on objective facts" that the person is violating the law. *State v. Sieler*, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980); *see State v. Duncan*, 146 Wash.2d 166, 43 P.3d 513 (2002) (Terry stop for traffic infraction is lawful).

Officer Kline had authority under Washington state law to stop Mr. Corrigan for speeding and loud exhaust pipes.[3] Officer Kline detained Mr. Corrigan for a reasonable amount of time in order to issue the

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[2] RCW 46.61.021(2)

[3] RCW 46.61.400 prohibits speeding, RCW 46.37.537 prohibits altered exhaust pipes and RCW 46.16.260 requires operators of motor vehicles to carry vehicle registration.

citation. Once the citation was issued Mr. Corrigan was free to leave. There is no dispute of material fact that would show otherwise. Because Officer Kline's stop and detention of Mr. Corrigan was lawful and reasonable, the court should dismiss plaintiff's claims of false arrest and false imprisonment.

2. Plaintiff's Abuse of Process/Malicious Prosecution Claim Should be Dismissed.

Probable cause to initiate criminal proceedings is a complete defense to a claim of false arrest and malicious prosecution, *Hanson v. Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993); *Peasley v. Puget Sound Tug. & Barge*, 13 Wn.2d 485, 499; 125 P.2d 681 (1942); *Wood v. Kesler* 323 F.3rd 872 (11th Cir. 2003).

"Probable cause" as used in malicious prosecution actions means reasonable grounds for suspicion supported by circumstances sufficiently strong to warrant a reasonably prudent person's belief that the accused was guilty of the offense charged. *Peasley*, 13 Wn.2d at 508. Probable cause is measured objectively rather than subjectively. *Bender v. City of Seattle*, 99 Wn.2d 582, 597, 664 P.2d 492, (1983).

While a *prima facie* case of want of probable cause may be established by proof that the criminal proceedings were dismissed or terminated in favor of plaintiff, the defendants may rebut the *prima facie* case. *Peasley*, 13 Wn.2d at 498-99. If facts sufficient to establish probable cause are shown, then the Court should declare as a matter of law that probable cause

existed and dismiss the action. *Peasley*, 13 Wn.2d at 499. Here, there is no question that Mr. Corrigan was operating his motorcycle in violation of two Washington traffic statutes.

a. Malice, an Essential Element of Malicious Prosecution, is Absent in This Case.

Even if Officer Kline did not have probable cause to initiate prosecution of plaintiff for obstruction, Mr. Corrigan's malicious prosecution claim would still fail for want of malice. "[W]ant of probable cause without malice is of no avail." *Barker v. Waltz*, 40 Wn.2d 866, 869, 246 P.2d 846 (1952).

In order to show malice, plaintiff must prove the prosecution was undertaken for improper or wrongful motives. *Turngren v. King County*, 104 Wn.2d 293, 306, 705 P.2d 258 (1985). Malice may be shown by proof the defendants instituted criminal proceedings against, plaintiff without believing him to be guilty, primarily because of hostility or ill will toward plaintiff, or for purposes of obtaining some private advantage over him. *Creelman v. Svenning*, 1 Wn.App. 402, 405, 461 P.2d 557 (1969). Officer Kline knew nothing about the plaintiff. Officer Kline felt no ill will and was merely trying to do his job.

In this case, the ample facts and circumstances exist to establish probable cause to cite and detain Mr. Corrigan for speeding and operating a motorcycle

will amplified exhaust pipes. In the absence of any showing of malice, this claim should be dismissed.

3. Intentional Infliction of Emotional Distress/"Outrage".

The tort of outrage requires the proof of three elements: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to plaintiff of severe emotional distress. *Kloepfel v. Bokor*, 149 Wn.2d 192, 195, 66 P.3d 630 (2003) (*citing Reid v. Pierce Cty.*, 136 Wn.2d 195, 202, 961 P.2d 333 (1998). The seminal case with regards to this claim is *Grimsby v. Sampson*, 85 Wn.2d 52, 530 P.2d 291 (1975). In this case, the Washington Supreme Court held that claims for outrage must be predicated on behavior that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Id.*, at 59 (quoting Restatement (Second) of Torts § 46 cmt. d). Whether the conduct complained of is sufficiently extreme to result in liability is a preliminary question for the Court before a claim of outrage can be allowed to go to the jury. *Pettis v. State*, 98 Wn.App. 553, 563, 990 P.2d 453 (1999).

Here, Officer Kline had reasonable suspicion to stop Mr. Corrigan and the amount of time Mr. Corrigan was stopped was also reasonable. Officer Kline's actions do not rise to a level where they could be

ruled "outrageous." Therefore, Mr. Corrigan's state law claim for outrage should be dismissed as a matter of law.

E. Mr. Corrigan's Federal Claims Should be Dismissed.

The traffic stop of Mr. Corrigan was lawful under Washington state law. Officer Kline detained Mr. Corrigan for a reasonable amount of time to issue the citations. A reasonable officer in the position of Officer Kline would have believed his conduct did not violate Mr. Corrigan's Constitutional rights. Mr. Corrigan's federal law claims should be dismissed because Officer Kline had statutory authority to cite Mr. Corrigan for speeding, loud exhausts and not carrying his registration.

F. Punitive Damages.

Plaintiff has asked for punitive damages against defendants. They are not available under state law. Turning to federal law, under the facts of this case, the claim for punitive damages should be dismissed. To be entitled to punitive damages plaintiff would have to show that the defendants acted with reckless or callous disregard for plaintiff's rights. *Smith v. Wade*, 461 U.S. 30, 51 (1983); *Iacobucci v. Boulter*, 193 F.3d 14, 25-27 (C.A.1 1999). Plaintiff has no basis under the facts of this case to show any entitlement to punitive damages.

IV. CONCLUSION

The plaintiff's claims have no basis in law or in fact. Officer Kline was authorized by Washington state law to stop, detain and issue plaintiff a traffic citation after he was observed speeding. Officer Kline took a reasonable amount of time to issue the citation, at which point plaintiff was free to leave. There is no material evidence to show otherwise. Thus, the defendants' motion to summary judgment should be granted and the complaint should be dismissed with prejudice.

Respectfully submitted this 17th day of May, 2006

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APPENDIX A-3

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

JOHN L. CORRIGAN, Plaintiff, vs. CITY OF FEDERAL WAY POLICE OFFICER MYRON KLINE; CHIEF OF POLICE ANNE E. KIRPATRICK [sic]; CITY OF FEDERAL WAY. Defendants	**CASE NO. CV5-1728RSM** PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STAY DISCOVERY PENDING RULING ON QUALIFIED IMMUNITY NOTE ON MOTION CALENDAR: May 12, 2006

Plaintiff has no problem with staying discovery while defendants bring a motion for and obtain a ruling on whether they are entitled to qualified immunity. It seems like a reasonable request, and if properly supported would certainly be in the best interests of the Court and the parties. However, in making that concession, I would hope that the following reasonable conditions are placed on the request:

1. The motion for qualified immunity be timely filed;

2. If the Court determines qualified immunity is not available that the discovery stay will be lifted; and

3. Discovery already commenced will not be stayed – see *Plaintiff's Motion For Discovery Sanctions.*

RESPECTFULLY submitted this 8th day of May 2006.

/s/ John L. Corrigan
John L. Corrigan